

JULIA W/51

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : STIPULATION AND ORDER

-v.- : S3 05 Cr. 621 (RJS)

ALBERTO WILLIAM VILAR, :

a/k/a "Albert Vilar," :

GARY ALAN TANAKA, :

Defendants. :

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DOC #:  
DATE FILED: 8/6/09

WHEREAS, on August 15, 2006, ALBERTO WILLIAM VILAR ("Vilar") and GARY ALAN TANAKA ("Tanaka") (collectively, the "defendants"), were charged in a twelve-count Superseding Indictment, S3 05 Cr. 621 (KMK) (the "Indictment"), with engaging in a conspiracy to commit securities fraud, investment adviser fraud, mail fraud, wire fraud, and money laundering, in violation of Title 18, United States Code Section 371; securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5 and Title 18, United States Code, Section 2; investment adviser fraud, in violation of Title 15, United States Code, Sections 80b-6 and 80b-17 and Title 18, United States Code, Section 2; mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2; wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2; money laundering, in violation of Title 18, United States Code, Sections 1957 and 2; and making

false statements, in violation of Title 18, United States Code, Sections 1001(a) and 2;

WHEREAS, the Indictment contained a forfeiture allegation pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, against any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to at least \$19,706,363.74 in United States currency, representing proceeds obtained as a result of the charged securities, mail and wire fraud offenses charged in the Indictment (the "Fraud Judgment"); and a forfeiture allegation pursuant to Title 18, United States Code, Section 982, against any and all property, real and personal, involved in the charged money laundering offenses, including all property traceable to such property, including but not limited to at least \$5,000,000 in United States currency (the "Money Laundering Judgment");

WHEREAS, the forfeiture allegation also included a substitute asset provision, pursuant to Title 21, United States Code, Section 853(p), whereby the United States asserted its intent to forfeit any other property of the defendants up to the value of the Fraud Judgment and/or Money Laundering Judgment, including but not limited to the following:

- (1) Any and all right, title and interest in Amerindo Technology Growth Fund II, Inc.; and

- (2) Any and all right, title and interest in Bear Stearns & Co., Inc. brokerage account number 102-01495, held in the name of Amerindo Technology Growth Fund II, Inc.

WHEREAS, on November 19, 2008, a jury returned a guilty verdict against Vilar on all twelve counts in the Indictment and Tanaka was found guilty on Counts One, Three, and Four of the Indictment (conspiracy, securities fraud, and investment adviser fraud) and was acquitted on the remaining Counts, including the money laundering counts;

WHEREAS, the defendants are awaiting sentencing, at which time the United States will seek the entry of an order of forfeiture, including forfeiture of the defendants' right, title and interest in Amerindo Technology Growth Fund II, Inc. ("ATGF II");

WHEREAS, ATGF II was a limited partner in @Ventures III, L.P. ("@Ventures III");

WHEREAS, @Ventures III dissolved in or about 2007, and @Ventures Management, LLC ("@Ventures Management"), is currently holding approximately \$273,611.89 (the "Funds"), which represents distributions due to ATGF II as a result of its limited partnership interest in @Ventures III, for the benefit of ATGF II; and

WHEREAS, the defendants, by their counsel, have informed the Government that they have no objection to the entry of this Stipulation and Order;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the United States, by Lev L. Dassin, Acting United States Attorney for the Southern District of New York, Assistant United States Attorney Marc Litt, of counsel, and @Ventures Management, by its counsel, Sarah Rothermel, Esq., as follows:


1. @Ventures Management will issue a check in the amount of \$273,611.89 (representing all of the funds held by @Ventures III on behalf of ATGF II), made payable to the "United States Marshals Service," which is to be sent to the United States Attorney's Office for the Southern District of New York, Attn: Assistant United States Attorney Amy Lester, One St. Andrew's Plaza, New York, New York 10007, within two weeks of the execution of this Agreement.

2. The United States Marshals Service is hereby authorized to take possession of the check issued by @Ventures Management and deposit the same into the Seized Assets Deposit Fund, pending the entry of an order by the Court addressing the proper disposition of the Funds.

3. The Clerk of the Court shall forward four certified copies of this Stipulation and Order to Assistant United States Attorney Amy Lester, One St. Andrew's Plaza, New York, New York 10007.

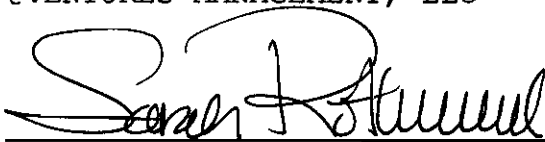
AGREED AND CONSENTED TO:

LEV L. DASSIN  
Acting United States Attorney for the  
Southern District of New York

By:   
MARC LITT  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 637-2295

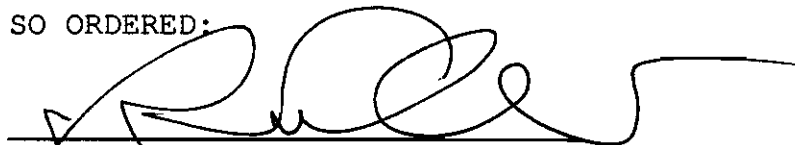

7/31/09  
DATE

@VENTURES MANAGEMENT, LLC

By:   
SARAH ROTHERMEL, ESQ.  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6512

July 30, 2009  
DATE

SO ORDERED:

  
HONORABLE RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF NEW YORK 

8/5/09  
DATE